

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

WAYNE D. BUTTS, #351620,

Petitioner,

v.

CIVIL ACTION NO. 2:07cv146

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's conviction on May 31, 2001, in the Circuit Court of the City of Hampton, Virginia for one (1) count of breaking and entering. Petitioner was sentenced to serve five (5) years in prison, of which five (5) years was suspended for a probation period of ten (10) years.

The matter was referred to a United States Magistrate Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia, for report and recommendation. The report of the Magistrate Judge recommending dismissal of the petition was filed on September 27, 2007. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court has

received no objections to the Magistrate Judge's Report and Recommendation and the time for filing same has expired.¹

The Court hereby ADOPTS the findings and recommendations set forth in the report of the United States Magistrate Judge filed on September 27, 2007, and it is, therefore, ORDERED that the petition be DENIED and DISMISSED WITH PREJUDICE and that judgment be entered in favor of Respondent.

Accordingly, the Court FINDS that the claim set forth in Ground (a) should be DISMISSED as this Court cannot consider federal habeas claims that rely solely on allegations that the state court misapplied state law; and the Court FINDS that the claim set forth in Ground (b) should be DISMISSED as Petitioner has failed to show either that the Supreme Court of Virginia unreasonably determined the facts or unreasonably applied federal law in dismissing his ineffective assistance of counsel claims.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the

¹The Court notes that the Magistrate Judge's Report and Recommendation was mailed to Petitioner on September 27, 2007 at his last known address, the institution at which he had been serving his sentence, thus the original deadline for Petitioner to file his objections was October 15, 2007. On October 4, 2007, the Court received Petitioner's copy of the report by return mail. Thereafter, the Court learned that Petitioner had been released from incarceration on April 27, 2007 without having notified the Court of his new address. By Order entered October 11, 2007, the Court directed a copy of the report be mailed to the forwarding address for Petitioner, as provided by the correctional institution, and the Court extended the deadline for filing objections to the report until October 29, 2007.

Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. The petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Order to the petitioner and to counsel of record for respondent.

/s/ Jerome B. Friedman
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

November 5, 2007